Bargaining the Climate and Energy Package: whither Europe?

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ACHIEVING A POLITICAL AGREEMENT ON THE "CLIMATE AND ENERGY PACKAGE" IS ONE OF THE HIGHEST PRIORITIES OF THE FRENCH EU PRESIDENCY THAT STARTED ON THE 1ST OF JULY. **CÉCILE KEREBEL, A BRUSSELS-BASED RESEARCHER FOR IFRI** (THE FRENCH INSTITUTE OF INTERNATIONAL RELATIONS - INSTITUT FRANÇAIS DES RELATIONS INTERNATIONALES), FRANCE'S LEADING INDEPENDENT INTERNATIONAL RELATIONS CENTER, ANALYSES WHAT LIES BEHIND AND IN FRONT THE CONSTRUCTION OF A EUROPEAN ENERGY POLICY.

The construction of a European Energy Policy has proved to be a long and winding process. Six months after the innovative legislative proposals made by the European Commission last January – as part of an unprecedented "package", linking for the first time the European Union's climate and energy policies (the so-called "Climate and Energy Package") – the twenty seven EU states are still discussing the way forward.

Yet it was the member states themselves who started the whole process more than a year ago, in March 2007, when the heads of state and government, gathered for the European Council under the German presidency, pompously agreed on an ambitious energy action plan to secure energy supplies in Europe and to decarbonise European society. The three - now well-known - goals of a 20% reduction in greenhouse gas emissions by 2020 (compared to 1990 levels), a 20% share of renewable energy in European energy consumption by 2020 and a 20% increase in energy efficiency by 2020, were decided on that occasion.

The clock is now ticking: European law-makers have to shape the new legislative framework before the decisive Copenhagen Summit at the end of 2009, which will decide on future international climate regulations after the expiry of the Kyoto Protocol in 2012. The Europeans have indeed to show consistency in words and deeds if they want to keep their leadership over the international climate negotiations. With this in mind, a political agreement on the "Climate and Energy Package" should be found before the end of this year, with the year 2009 most likely to be lost to the incoming European elections and the difficult choice of the next Commission.

The question is whether such a tight time frame will strain the capacity of the EU's slow and complex decision-making process, mainly based on bargaining and consensus-building among very different players. Following the European treaties law, the right to legislative initiative is reserved for the Commission. That is why the European Council of March 2007 left it to the Commission to frame the EU's future energy and climate policy and define how the three "20s" objectives should be implemented in practice. Under the codecision procedure, the proposals are then voted, and eventually amended, both by the national ministers within the Council of the EU and by the European Parliament. The "Climate and Energy Package" was high on the agenda of the last two Councils gathering first the environment ministers (on the 5th of June) and then their energy counterparts (on the 6th of June). But the national representatives have limited themselves to a public debate highlighting their respective views, and most strikingly, their divergences on the new legislations promoted by the Commission. Some major break lines occur in the current bargaining on the future actions Europe will take to tackle climate change, with France and Great Britain often standing on different grounds.

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What is on the Table?

Four legislative proposals will be put to vote: the in-depth redesign of the EU-wide greenhouse gas Emissions Trading Scheme (ETS) for the period beyond 2012; the sharing among the 27 states of the remaining "effort" to make emissions reductions in the sectors not covered by the EU ETS by 2020 (with differentiated targets assigned to each state, for instance a 14% decrease for France and a 16% one for Great Britain); the dispatching among the member states of the renewable energy increase by 2020 (with again differentiated national targets, with a share of 23% of renewables in France and a 15% target on the other side of the Channel); and last but not least the first-ever European regulatory framework for the new carbon storage technology. This impressive series of proposals still excludes one of the original goals decided upon by the March 2007 European Council: the 20% energy efficiency target has not so far been translated into a compulsory legislation. This oversight should be repaired in the autumn when the European Commission will present its proposals on the topic.

There is controversy on almost all the measures put forward by the Commission. The current debates among the national ministers, on the one hand, and among the MEPs[1] of the various parliamentary committees in charge of preparing the coming plenary sessions, on the other hand, only show consensus on two core principles of the new ETS architecture: The establishment of a harmonized EU-wide cap by sector at the European level in place of the current national allocations plans and the idea of progressively auctioning the industries' emission allowances which were previously given for free. For the rest, member states are divided over the burden sharing for emission reductions and renewable energy (in particular the calculation of the national targets), the flexibility mechanisms to be put in place to help them reach those targets, the extent given to the emission permit auctions, the addition of special measures to protect European energy-intensive industries against foreign competitors not subjected to such a harsh legislative climate and last but not least the controversial 10% biofuels target by 2020, which is part of the Commission's directive proposal on renewable energy (and incidentally, which was decided upon by the heads of state and government at the March 2007 European Council).

An East-West Divide

A significant break line arises concerning the method used by the Commission to calculate how the burden is shared out between the 27 states. Interestingly enough, this tussle reveals a strong East-West split among the European countries. In its proposals, the Commission has strived to introduce solidarity and cohesive considerations in order to smooth the level of efforts asked of the poorer member states (i.e. the new Eastern member states). It has used a GDP criterion to calculate the national emission reduction and renewable energy targets, instead of referring to the countries' climatic, industrial or agricultural characteristics. At first, wealthier states from Western Europe opposed being forced to reach much higher targets than their Eastern counterparts, claiming that cohesive elements were inappropriate in an environmental piece of legislation. But they have now come to terms with it and have ceased to pressure for target recalculation, except for a small group of states around Italy (Austria, Luxembourg, Malta and Cyprus) that remain adamant.

Surprisingly, the call for a recalculation of the national effort is now coming from a coalition of new member states led by Hungary. They oppose the use of 2005 as the reference year for the setting of the emission reductions' targets. The choice of 2005 is purely technical and due to a lack of available data for the previous years. But the Eastern countries are calling for the use of 1990 instead, so as not to overlook the huge decrease in greenhouse gas emissions in the former Soviet block following the deindustrialization of the region in the nineties. Their obvious purpose is to further reduce the effort demanded of them. However their claim has little chance of success since consensus is growing on the figures proposed by the Commission. Anyhow, further deliberations will have to take into account any actual economic gaps existing within Europe and define a way to address climate change without losing track of fairness and equity - the international negotiations on the post-Kyoto regime do face the same challenge with the intended inclusion of emerging nations.

Market Governance versus Protectionist Regulation

As to the three other main controversial issues (the degree of flexibility allowed, the protection of energy-intensive sectors such as the steel, cement and chemical industries, and the biofuel target), a clear break line has emerged between the countries primarily supporting market mechanisms (with Great Britain in the first line) and the ones more concerned about protecting their national industries (first and foremost France).

The "market versus protectionism" division is the most visible when discussing the special treatment to be adopted (or not) in favour of European industries that have to abide by EU ETS, whilst at the same time facing strong foreign competition. Some companies and states point out that such a disadvantage could lead the European companies to delocalise to other parts of the world and hence displace European emissions elsewhere (generating the so-called "carbon leakage"). The Commission has so far excluded the energy-intensive industries from the auction system. It has suggested waiting until 2011 to define a protection mechanism, depending on the international agreement achieved in Copenhagen (with the inclusion or not of Europe's main economic competitors such as the United States, China or India). However, a large number of countries, especially France and Germany, are insisting on shaping the special treatment before. Germany pushes to grant energy-intensive industries 100% free emission allowances, whereas France has distinguished itself with a proposal for a carbon tariff to protect these sectors from imports from third countries. France is fairly isolated with its "carbon tax" initiative, which it has already smoothed over into non-specified "border-adjustment measures". It has little chance of putting them forward, with countries such as Great Britain and the Scandinavian states doubting such a carbon leakage will ever occur and fearing that a carbon tariff would conflict with international trade rules.

The future of the biofuel targets depends on the same kind of haggling. Even though a special ad-hoc committee has been formed on the issue, the national representatives are still unable to agree on social and environmental criteria to place biofuel production within a framework of guidelines. France, alongside Germany and the new member states, argue for strong criteria for the sake of biodiversity and world food production but also for the benefit of their national producers for which criteria of this sort would offer protection from American or Southern competitors. They are also keen on defending the high target set by the Commission. On other side, Great Britain, the Netherlands and the Scandinavian countries prefer soft sustainability criteria so as not to hinder international trade. Indeed, they would have to import the bulk of their biofuels. They also put into question the legitimacy of the 10% target, all the more as the biofuels would, in the present Commission's proposal, only have to lead to a 35% greenhouse gas reduction compared to conventional gasoline – they ask for a much more significant decrease of 50% at least.

> "Will France be able to act as an honest broker of the debates during the French EU Presidency?"

All the member states ask for more flexibility to help them achieve their emission reductions and renewable energy targets. In the last few months, an intense debate has opposed the countries, such as Great Britain, in favour of the trading system of renewable energy certificates (the so-called "guarantees of origin") suggested on a voluntary basis by the Commission, to the promoters of the national support schemes, fearing such a market would damage their own successful national regulated systems (Germany, Spain and, to a lesser extent, France that has not been deeply involved in this tussle). But lately, some progress has been made on this issue.

The risk of greater legal uncertainty for the national support schemes is more and more recognized by the market promoters. The British position has profoundly evolved and is much more accommodating. At the last Environment Council, the British government went so far as to present a joint declaration with Germany and Poland proposing three alternative flexibility mechanisms much safer for national schemes than the guarantees of origin (the possibility to transfer national targets between states, to implement joint projects and to join national targets on a regional basis).

The Way Forward for the French EU Presidency

France had shown strong views on the Commission's proposals and has now taken over the EU Presidency. This raises a first question: will France be able to act as an honest broker of the debates? And secondly, will the failure of the Irish referendum for the Lisbon Treaty overshadow the energy and climate debate, since the institutional future of the EU will certainly occupy European politicians' mind in the coming months? Or will it, on the contrary, help the energy and climate agenda move forward as EU leaders will be eager to demonstrate concrete results to their sceptical citizens? ■

1 - Member of European Parliament